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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 1593 OF 2007

IN

FIRST APPEAL No. 904 OF 2007

Premchand Agarwal

Applicant

Vs.

M/s. Shaym Gandhi Constructions Respondent

Mr. Sanjay Kshirsagar, Advocate for applicant.

Mr. D. M. Gupte, Advocate for respondent.

**CORAM : Smt. R. S. DALVI, J.**

**DATE : June 13, 2007.**

**P.C. -**

. The only aspect to be considered in the appeal is whether the suit is barred by law of limitation. The appellant is in possession of the suit premises. His possession cannot be disturbed, pending the appeal. Hence, there shall be an order of stay in terms of prayer Clause (A) of the Civil Application. However, the appellant shall not create any third party rights in the suit premises or part with the possession in the suit premises, during pendency of the appeal.

2. The respondent's advocate claims that the amount decreed under Clause (3) of the

impugned judgment and order dated 20-12-2006 be directed to be deposited upon the admission of the appeal and if the stay is to be granted. The main prayer in the suit was not for damages. In Clause (3) of the judgment, defendant is directed to pay Rs.1,81,000/- towards damages and notice charges alongwith interest thereon @ 12% P.A. The main relief in the suit is delivery of possession of suit shop. The suit is therefore, not for a money decree. The advocate for the respondent relies upon judgment of this Court in **Bhogavati Sahkari Sakhar Karkhana Ltd. Vs. M/s. Chaugule & Sons [2003(2) Mh.L.J.562]**, which is on order in case of a money decree. The reasoning and the observation of said judgment do not apply to the case of a decree for recovery of possession, in which damages are also granted. Hence, there may be no order of deposit of any amounts to be made by the defendant. Civil Application is disposed off.

3. Respondent's advocate waives service.

The appellants to submit paper book .

Sd/-  
[ Mrs. R. S. DALVI, J.]